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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re G.B. et al., Persons Coming Under the  
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

L.R.,

Defendant and Appellant.

D053226

(Super. Ct. No. J517015B-D)

APPEAL from a judgment of the Superior Court of San Diego County, Carol  
Isackson, Judge. Affirmed.

L.R. appeals a judgment declaring her minor children G.B., G.R. and J.M.  
(collectively minors) dependents of the juvenile court under Welfare and Institutions  
Code section 300, subdivision (b) and removing them from L.R.'s custody. (Statutory  
references are to the Welfare and Institutions Code.) L.R. challenges the sufficiency of

the evidence to support the court's jurisdictional findings and dispositional order. We affirm the judgment.

## FACTUAL AND PROCEDURAL BACKGROUND

In October 2007 the minors came to the attention of the San Diego County Health and Human Services Agency (Agency) when L.R.'s live-in boyfriend Jimmie M. (who is J.M.'s, but not G.B.'s or G.R.'s father) pushed and choked L.R. and pulled her hair. Jimmie was arrested for spousal battery. In December 2007 another incident of domestic violence occurred and L.R. sustained a laceration just below her neck. Six-year-old G.B. told the social worker Jimmie and L.R. engaged in physical fights (they pushed each other) in her presence. Five-year-old G.R. said Jimmie and L.R. yelled at each other when they were angry. Three-year-old J.M. was too young to make a statement. L.R. admitted the minors were present during the December incident.

L.R. and Jimmie admitted having a history of domestic violence but minimized the level of violence that occurred. L.R. repeatedly refused voluntary services and failed to obtain a permanent restraining order against Jimmie. She agreed to abide by a safety plan prohibiting her from having any contact with Jimmie. However, in February 2008 G.B. and G.R. reported Jimmie was living in the family home and another incident of domestic violence occurred. G.B. and G.R. again witnessed Jimmie push L.R.

Following this incident and L.R.'s refusal to cooperate with Agency or enforce the safety plan, Agency filed petitions in the juvenile court alleging the minors were at substantial risk of serious physical harm because L.R. periodically exposed them to domestic violence. The court detained the minors in out-of-home care.

By the time of the contested jurisdiction and disposition hearing, L.R. had attended four of 12 parenting classes. She had not begun domestic violence treatment or attended therapy. L.R. testified G.B. and G.R. were not present during the October 2007 domestic violence incident, and J.M. was at home but asleep at the time. L.R. did not remember telling the social worker the minors were present during the December 2007 incident. She said that during the February 2008 incident Jimmie tried to choke her. As she tried to get away from him, cold oil accidentally spilled and a glass broke on the floor. L.R. picked up J.M., who was asleep, and carried him to her sister's house.

After considering the evidence and hearing argument of counsel, the court sustained the allegations of the petition, declared the minors dependents and placed them in relative care. The court ordered L.R. to participate in reunification services.

## DISCUSSION

### I

L.R. challenges the sufficiency of the evidence to support the court's jurisdictional findings. She asserts there was no showing the minors were present during the alleged incidents of domestic violence. She further asserts it cannot be reasonably inferred domestic violence was likely to recur or that she was unable to protect the minors from future incidents of domestic violence.

### A

In reviewing the sufficiency of the evidence on appeal, we look to the entire record to determine whether there is substantial evidence to support the findings of the juvenile court. We do not pass on the credibility of witnesses, attempt to resolve

conflicts in the evidence, or determine where the weight of the evidence lies. Rather, we draw all reasonable inferences in support of the findings, view the record in the light most favorable to the juvenile court's order and affirm the order even if there is other evidence supporting a contrary finding. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53; *In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610.) The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the order. (*In re L. Y. L.* (2002) 101 Cal.App.4th 942, 947.)

Section 300, subdivision (b) provides a basis for juvenile court jurisdiction if the child has suffered, or there is a substantial risk the child will suffer, serious physical harm or illness as a result of the parent's failure to adequately supervise or protect the child or provide adequate medical treatment. In enacting section 300, the Legislature intended to protect children who are currently being abused or neglected, "and to ensure the safety, protection, and physical and emotional well-being of *children who are at risk of that harm.*" (§ 300.2; emphasis added.) The court need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194-196.) The focus of section 300 is to avert harm to the child. (*In re Jamie M.* (1982) 134 Cal.App.3d 530, 536.)

## B

Here, the evidence showed L.R. and Jimmie had a history of domestic violence. The two older minors described how L.R. and Jimmie physically fought and yelled. During one incident, Jimmie pushed and choked L.R. and pulled her hair, resulting in his arrest for spousal battery. During another incident, at which the minors were present, the

violence escalated so that L.R. sustained a laceration beneath her neck. The third incident involved L.R. being choked by Jimmie and running to safety, amidst broken glass and oil on the floor, with J.M. in her arms. This evidence supports a finding the minors were at risk of harm from the ongoing violence in the home.

Moreover, L.R. refused to obtain a restraining order and initially allowed Jimmie to remain in the home, further exposing the minors to the defined risk of harm. She minimized the seriousness of the violence, claiming the minors were not present or exposed to the violence. However, domestic violence in a minor's home constitutes neglect in that it is a failure to protect the children from the substantial risk of encountering the violence and suffering serious physical harm or illness from it. "Such neglect *causes* the risk." (*In re Heather A.*, *supra*, 52 Cal.App.4th at p. 194; see also *In re Sylvia R.* (1997) 55 Cal.App.4th 559, 562 [children suffer secondary abuse from witnessing violent confrontations]; *In re Basilio T.* (1992) 4 Cal.App.4th 155, 169 [minors were at substantial risk of serious harm due to violent confrontations in family home]; *In re Benjamin D.* (1991) 227 Cal.App.3d 1464, 1470, fn. 5 [common sense and expert opinion indicate domestic violence is detrimental to children].) Even if children are not the ones being physically hurt, domestic violence impacts them "because they see and hear the violence and the screaming." (*In re Heather A.*, *supra*, 52 Cal.App.4th at p. 192; see also *In re Jon N.* (1986) 179 Cal.App.3d 156, 161.)

It was reasonable for the court to infer from the ongoing domestic violence, some of which was in the minors' presence, that the minors were at risk of suffering serious physical harm or illness. Thus, the court was entitled to intervene to prevent further

harm. Substantial evidence supports the court's jurisdictional findings. (*In re Heather A.*, *supra*, 52 Cal.App.4th at pp. 194-196.)

## II

L.R. challenges the sufficiency of the evidence to support the court's dispositional order. She asserts there was no evidence that removing the minors from her custody was necessary to protect them from harm. She further asserts the court should have considered disposition alternatives less drastic than removal.

## A

Before the court may order a child physically removed from his or her parent, it must find, by clear and convincing evidence, the child would be at substantial risk of harm if returned home and there are no reasonable means by which the child can be protected without removal. (§ 361, subd. (c)(1); *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.) The jurisdictional findings are *prima facie* evidence the child cannot safely remain in the home. (§ 361, subd. (c)(1).) The parent need not be dangerous and the child need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child. (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136; *In re Jamie M.*, *supra*, 134 Cal.App.3d at p. 536.)

In determining whether removal is warranted, the court may consider the parent's past conduct as well as present circumstances. (*In re S. O.* (2002) 103 Cal.App.4th 453, 461.) We review the court's dispositional findings for substantial evidence. (*In re Kristin H.*, *supra*, 46 Cal.App.4th at p. 1654.)

B

Here, the court removed the minors from L.R.'s custody because the evidence showed there was a history of violence in the home, which the minors heard or saw, and thus, they were at substantial risk of harm if returned home. The evidence also supported a finding there were no reasonable means by which the minors could be protected without removal from L.R.'s custody. L.R. minimized the seriousness of the violence and repeatedly refused voluntary services. She failed to obtain a permanent restraining order against Jimmie and violated her agreement to abide by a safety plan prohibiting contact with him. L.R. had not yet participated in domestic violence treatment or individual counseling. From this evidence, the court could reasonably find returning the minors to L.R.'s custody was not a feasible alternative. Substantial evidence supports the court's dispositional orders.

DISPOSITION

The judgment is affirmed.

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McINTYRE, J.

WE CONCUR:

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MCDONALD, Acting P. J.

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AARON, J.